ADDRESS

—of—

Hon. W. Y. GHOLSON,

On the Subject of the

Payment of the Bonds of the United States in Coin,

Delivered to the Grant Club at Avondale,

—On—

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ADDRESS

—*of*—

Hon. W. Y. GHOLSON.

FELLOW-CITIZENS: We have a public debt which exceeds $2,500,000,000. Both our political parties are agreed that this debt shall be paid. As to the mode of payment, neither party is precisely definite in the declarations on the subject contained in its platform. Each of the platforms rather indicates a rule by which the mode of payment is to be ascertained, than an announcement of the mode itself. Both those rules substantially look to a proper construction of the laws under which the debt was contracted. Those laws, according to an undoubted principle, really constitute a part of the contract. The bonds, when they are the written evidence of indebtedness, are to be read as if the laws authorizing their issue were expressly recited in them and constituted a part of the very terms of the obligation created. What those terms, so considered, provide as to the mode of payment is really a question of construction. If, by a fair and proper construction, applying the rules of construction applicable in like cases, the principal of the bonds is payable in coin, it should be so paid; if any other mode of payment is allowed or provided for, that mode may be adopted. The public creditor can have no right to

complain if the payment be made according to the terms of the obligation, fairly and reasonably construed. That he has a right to ask, and that honor and justice require that he shall receive. If it be the proper construction of the obligation that a mode of payment other than in coin may be adopted, then, it is no reason why payment in coin should be made that the creditor and the officers of the Government, at the time of the creation of the obligation, were mistaken as to the meaning of the provisions of the laws under which it was created. The officer had no authority to make any statement not authorized by the laws, nor can the creditor be permitted to rely upon any such unauthorized statement. He is bound to know the law, and can not make ignorance of it the foundation for a claim against the Government.

But if there be any doubt as to the meaning of the law, then the opinion of those acting under it, expressed and made the ground of their action at or about the time of the enactment of the law, is a cotemporaneous construction, entitled to much consideration. And if such opinion and action were by wise statesmen and learned lawyers, a greater degree of weight should be attributed to the construction they gave, and it should not be set aside by those who may have subsequently to act upon the same subject-matter without weighty reasons and grave considerations. If such statesmen and lawyers as Chase and Fessenden, when negotiating loans under acts of Congress, obtained them by representations that the principal and interest were payable in coin, their mistake should be made clear before the payment should be otherwise made.

In the construction either of laws, or written contracts, we should put ourselves in the position of those who made them, and interpret the language which they used in view of the circumstances by which they were surrounded. When action taken consists of words spoken or written, as it unquestionably may, those who participated in that action, playing a conspic-

uous part, must have been well informed as to the circumstances under which they were acting. If we have a record made at the time of the circumstances then declared by them as influencing their action, it affords the strongest evidence to show the true meaning of any words used in signifying such action.

The question whether the principal of the bonds of the United States is properly or legally payable in coin, or may be fairly and properly paid in United States legal-tender notes, entirely depends upon the proper meaning and construction of general expressions, found in the acts authorizing the issue of such United States notes. Those general expressions bearing on the question are stronger in the first than in either of the other acts under which such notes were issued. Now, the circumstances under which that act was passed are well known, and they conclusively show that this measure of issuing notes and making them a legal tender, was resorted to from necessity and was intended as a mere temporary measure. They were so regarded by those who introduced and urged the enactment of the law. The member of the House of Representatives, who introduced the bill, said that he offered it as a "war measure—a measure of necessity and not of choice, * * * to meet the most pressing demands upon the treasury, to sustain the army and navy. * * * These are extraordinary times, and extraordinary measures must be resorted to, in order to save our government and preserve our nationality." The chairman of the Committee on Finance, in reporting the bill to the Senate, among other things, said: "An assurance should be given to the country that it was not to be resorted to as a policy; that it was what it professes to be—but a temporary measure. The opinions of the Secretary of the Treasury are perfectly well known. He has declared that, in his judgment, it is, and ought to be, but a temporary measure, not to be resorted to as a policy, but simply on this single occasion

because the country is driven to the necessity of resorting to it. I have not heard anybody express a contrary opinion; or, at least, any man who has spoken on the subject in Congress." Many like remarks are to be found in the debates on the subject, a collection of which has been made by the Comptroller of the Currency, in his annual report of December, 1867. So far as the circumstances under which the act was passed may bear upon any language used in it, we have the clearest evidence that those circumstances influenced and affected the use of that language.

The language to be considered consists of general expressions—so general, indeed, as to embrace, in a mere literal sense, more than is understood to be, as yet, claimed. Before coming to a direct consideration of that language, it is proper to advert to the rules of construction, as to the use, in any writing, of general words and expressions. For it is very certain, that the literal meaning of the words wherein a law is expressed, though the primary index or clue to the intention of its author is not conclusive as to such intention, which may be ascertained by other indicia, to be different from that which the literal meaning of the words suggest; and it is the object of interpretation to discover the sense which those who constructed the law, attached to the words wherein it is expressed. Now, there is a very old rule of construction, which I shall quote from the maxims of the celebrated Bacon, that "General words are to be restricted unto the fitness of the matter or person." It was in view of this maxim that our own great judge, Marshall, in construing an act of Congress, said: "The words of the section are in terms of unlimited extent. The words 'any person or persons' are broad enough to comprehend every human being. But general words must not only be limited to cases within the jurisdiction of the State, but also to those objects to which the legislature intended to apply them."

This, substantially, is the same with another well-known rule,

that you are not required to stick in the mere letter of the law. Its sense and spirit, its scope and intention are to be regarded in its construction. The true intent and meaning of a law should be regarded, to ascertain which is the object of all construction. "For many times," says a learned writer on the subject, "things which are within the words of statutes are not within the purview of them, which extends no further than the intent of the makers, the principal thing to be considered." It is in view of these rules of construction, that I understand the Chicago platform, when it speaks of the letter and spirit of the laws.

And so, when the New York platform says, that the "obligations of the Government should be paid in lawful money of the United States," where the law does not provide for payment in coin, although it is clear, that under the expression, lawful money, the United States legal-tender notes may be included, still that platform leaves open for construction, and undecided, the question what provision the law makes as to payment in coin of any class of obligations, or whether the notes are for the purpose of such payment lawful money. It does not say that there must be an express or literal provision for payment in coin. For example, as to bonds issued for the payment of dollars, when there was no other lawful money but gold and silver coin, the undoubted intention of the law was that payment should be made in coin. And even since the legal-tender notes were issued, whether they are lawful money for the payment of the permanent and funded debt of the United States, is but another way of putting the question whether the law provides for the payment of that debt in coin. If they are not lawful money for that purpose, then the bonds representing that debt are payable in coin, and the law so provides. They must be payable, either in coin or in lawful money, including notes as well as coin, and if, upon a fair, just and reasonable interpretation of the laws, they are not payable

in the latter mode, then the law does provide for their payment in coin.

It is true that part of the Democratic platform is in the nature of a Delphic oracle, open to different interpretations according to the views of those interested in giving it a construction. But, as I understand the rule, if a construction consistent with fair conduct and honest intention can be placed upon the acts and words of a party, you are to do so, and not unnecessarily to put upon those acts and words a construction directly at variance with right and justice. And it will be observed, that the platform itself proposes that the action of the Government shall conform to what is right and just. It can never be right or just for the Government to pay its obligations otherwise than their terms, fairly and reasonably construed, may require. The only objection, in this view, to that part of the Democratic platform is the negative form of its proposition, which puts upon the holders of the obligations of the Government the burden of showing that the law does provide for their payment in coin. But this burden of proof, upon a mere question of construction, is of small advantage to the party to be charged. For, after all, the question really is—looking at the law—at other laws upon the same subject-matter—at the circumstances preceding and attending its enactment, of which notice may be properly taken—what does the law provide?

I now read the title and the first and second sections of the act of 25th February, 1862:

"An act to authorize the issue of United States notes, and for the redemption or funding thereof, and for funding the floating debt of the United States.

"Be it enacted, etc., That the Secretary of the Treasury is hereby authorized to issue, on the credit of the United States, one hundred and fifty millions of United States notes, not bearing interest, payable to bearer, at the Treasury of the United States, and of such denominations as he may deem

expedient, not less than five dollars each: *Provided*, however, that fifty millions of said notes shall be in lieu of the demand treasury notes authorized to be issued by the act of July 17, 1861; which demand notes shall be taken up as rapidly as practicable, and the notes herein provided for substituted for them: *And provided*, further, that the amount of the two kinds of notes together shall at no time exceed the sum of one hundred and fifty millions of dollars, and such notes herein authorized shall be receivable in payment of all taxes, internal duties, excises, debts and demands of every kind due the United States, except duties on imports, and of all claims and demands against the United States of every kind whatsoever, except for interest upon bonds or notes, which shall be paid in coin, and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid. And any holders of said United States notes depositing any sum not less than fifty dollars, or some multiple of fifty dollars, with the Treasurer of the United States, or either of the Assistant Treasurers, shall receive in exchange therefor duplicate certificates of deposit, one of which may be transmitted to the Secretary of the Treasury, who shall thereupon issue to the holder an equal amount of bonds of the United States, coupon or registered, as may by said holder be desired, bearing interest at the rate of six per centum per annum, payable semi-annually, and redeemable at the pleasure of the United States after five years, and payable twenty years from the date thereof. And such United States notes shall be received the same as coin, at their par value, in payment for any loans that may be hereafter sold or negotiated by the Secretary of the Treasury, and may be reissued from time to time, as the exigencies of the public interests shall require."

"SEC. 2. And be it further enacted, that to enable the Secretary of the Treasury to fund the treasury notes and floating debt of the United States, he is hereby authorized to issue, on the credit of the United States, coupon bonds, or registered bonds to an amount not exceeding five hundred millions of dollars, redeemable at the pleasure of the United States after five years, and payable twenty years from date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the bonds herein authorized shall be of such denominations, not less than fifty dollars, as may be determined upon by the Secretary of the Treasury. And the Secretary of the Treasury may dispose of such bonds at any time, at the market value thereof, for the coin of the United States, or for any of the treasury notes that have been, or may hereafter be, issued under any former act of Congress, or for United

States notes that may be issued under the provisions of this act; and all stocks, bonds, and other securities of the United States, held by individuals, corporations or associations within the United States, shall be exempt from taxation by, or under State authority."

Those who claim that the principal of the bonds of the United States may be paid in United States legal-tender notes, rely upon this act of February 25, 1862, and the subsequent acts under which such notes were issued. As said by Senator Morton to other senators who disputed that proposition—"Let me say—if they desire to ascertain the qualities and capacities of the legal-tender notes, what debts they will pay, and what debts they will not pay, they must look to the laws creating the legal-tender notes, and not to the statutes authorizing the five-twenty bonds." He then refers to the sections of the act of February 25, 1862, which I have read, and continues: "The declaration is that such notes shall be receivable in payment of all claims and demands against the United States, of every kind whatsoever, except for interest upon bonds and notes, which shall be paid in coin. More comprehensive language could not be employed, and you can not conceive of any debt against the United States left out of this phrase, save that which is specially excepted. It comprehends all claims and demands of whatsoever kind. A bond is a claim; a bond is a demand. The very exception proves that bonds were comprehended in the phrase, for if they were not, there was no necessity for excepting the interest upon them. But the statute does not stop here. It goes on to say, tautologically, that such notes shall also be lawful money and a legal-tender in payment of all debts, public and private, within the United States, except duties on imports and interest as aforesaid. Every debt which the United States owes is a public debt; it has no private debts, and a five-twenty bond is a public debt in the fullest sense of those words, for which the law declares such notes shall be lawful money and a legal-tender."

All who either before or since, have claimed that the princi-

pal of the five-twenty bonds may be properly paid in the legal-tender notes, take precisely the same ground. It is incontrovertible, if the premises assumed in the interpretation of the act be correct, that the general words "all claims and demands," and "all debts, public and private," were intended by Congress to apply to the five-twenty bonds. The real question is, did Congress so intend? This intention is inferred, as perfectly clear, from the general and comprehensive language used, including all claims or demands against the United States, of every kind whatsoever, and all debts public or private. Now suppose it be admitted, that there were claims and demands against the United States, public debts, other than the five-twenty bonds, which it was not the intention of Congress to include in that general and comprehensive language, then, the conclusion contains what is not necessarily in the premises, and is, therefore, logically fallacious, or according to the ordinary expression, proves too much.

As shown by the report of the Secretary of the Treasury in December, 1861, the public debt of the United States, for which bonds and notes had been issued, amounted to more than two hundred and sixty-seven millions of dollars, and of this more than seventy millions had been contracted before the war of the rebellion, and the consideration of the residue, as shown by the same report, had been received in coin, or its equivalent. Did Congress intend that this debt, or any part of it, should be payable in the legal-tender notes issued under the act of February 25, 1862, or any subsequent act? The action of the Government has been to the contrary. The loans of 1842, of 1847, and of 1848, then running to maturity, have been paid in coin. No one, it is understood, now claims that the loan of 1858, of twenty millions of dollars, is to be paid otherwise than in coin, and so as to the loans made under the act of July 17, 1861, included under what are known as the 1881 bonds.

Yet all these bonds are claims and demands against the

United States, and each of them is "a public debt" in the language of the Senator quoted. If, then, it be admitted that these bonds are not included in this general language, and that Congress never intended that they should be paid in the legal-tender notes, or otherwise than in coin, or its equivalent, the argument, from the mere use of that general language, fails, and we are at liberty to look at the purpose and object of the law, to be ascertained not only from its language, but from the surrounding circumstances, in order to determine what claims and demands, what public debts, it was really the intention of Congress should be payable in those notes.

As to the funded debt of the United States existing at the time the system of the United States legal-tender notes was inaugurated, no one has been found to claim that it can be fairly and honestly paid in a depreciated currency, such as the legal-tender notes now are, and, therefore, no such intention can be properly attributed to Congress. And it will be apparent, from the least consideration, that there is another class of claims or demands against the United States, another part of the public debt, that can not, from the very reason and nature of the thing, be so payable, and that is, the United States legal-tender notes themselves. A United States note, in the language before quoted, is a claim, it is a demand, it is a public debt. But, unquestionably, when paid, it must be paid, and can only be paid, in what is really money, and not in other United States notes.

There is a maxim, that what is very like is not the same. The United States notes for many purposes were made like gold and silver coin by the act of Congress, but to make them gold and silver coin was above its might. They are promises to pay money, and from the very nature, purpose, and object of their creation, the money meant is gold and silver coin—what is really money, and not similar promises to pay. No one, I suppose, has ever claimed that they were to be otherwise

paid. Indeed, it would be absurd to say that they could pay themselves, or that one could pay another. If you take a $1,000 note to an Assistant Treasurer, and he gives you ten $100 notes, you do not call that payment. However general, therefore, the language of the act of Congress may be, as to payment of claims against the United States in United States notes, it can not, from the very nature of the thing, extend to those notes or to the claims upon them—they are necessarily an exception, and so clearly an exception, that it would have been considered an idle tautology to have expressed it in terms. And it is a necessary consequence that when you come to the question of discharging the obligation created by the United States notes, the capacity given them to discharge other obligations, and the effect which they are to have when used for that purpose, must be dismissed from the mind.

If then, it can be shown that a five-twenty bond to be issued under the act of the 25th of February, 1862, the first two sections of which I have read, as connected with the United States notes to be issued under the same act, was intended by Congress to be the mode of paying or discharging the obligation created by the notes, the conclusion follows, that the bond can only be paid in that which would properly be a payment of the notes. That such was the intention of Congress is manifest from the title of the act and express provisions both in the first and second sections. They show that the bonds were to be used for the redemption or funding of the notes. The use of these expressions is inconsistent with the idea that the very thing redeemed or funded might be returned. When bonds were given in exchange for notes, as clearly provided for in the act, that was not really the redemption of the notes contemplated in the title. It was the first step in the process. Congress undoubtedly intended to make the redemption good by payment. It is absurd to say that the redemption would be made good by returning the notes which were to be redeemed.

The payment intended was, therefore, to be made in that alone, which could be a real and substantial payment—gold and silver coin. A right to make the payment in the notes would take from the transaction every characteristic of a redemption. So claims can not, in any proper sense, be said to be funded, if there be a right to return to the claimants the claims which are the subject of the operation, and place them in the precise position they were at its beginning.

Indeed, the first section of the act of the 25th of February, 1862, contains a provision wholly inconsistent with the idea that the bonds were payable in the notes. The holders of notes to the amount of fifty dollars, or any multiple of fifty, had the right to require a bond of like amount in exchange. If it can be conceived that it was the intention of Congress that, at any time after five years, such holder of a bond might be required to take notes in payment thereof, then, by the very terms of the act, he would have the right to demand another bond. And there is no limit to a repetition of the process. It is absurd to attribute any such intention to Congress.

It is true, this provision, repeated upon the occasion of the second issue of legal-tender notes, was repealed by a subsequent act, but this repeal does not affect the question now being considered—what was the intention of Congress as shown by the act of February 25, 1862? Was it *then* the intention that the general language "all claims and demands, of every kind, whatsoever," as used in that act, applied to the five-twenty bonds to be issued under it? That act was the inauguration of the system, and furnishes the key to all the subsequent legislation. It is that act which assigned to the United States notes their attributes and qualities. No subsequent act has gone any further, or used more general language. If that act did not make them lawful money to all intents and purposes, and equal to coin, except in the payment of duties

and interest on the public debt, it has been done by no other act.

The provisions of the acts for the funding and redemption of the notes by the bonds show that the bonds were regarded as a mode of paying the notes. When any one under the act of February 25, 1862, or the subsequent ones authorizing issues of United States bonds—for in this respect there is no substantial variation—being a creditor of the United States holding notes payable on demand, presented those notes and received a bond, the arrangement made and authorized by law was this: It was said, on the part of the Government, the notes call for immediate payment in coin; the exigencies of the public interests will not permit this: you will certainly be paid at the end of twenty years, and it may be some time after five years, if there be means of payment; and, until payment shall be made, interest will be paid you in coin: and as evidence of this arrangement, this bond of the United States is given to you. The creditor agrees to the arrangement, gives up his notes, and accepts the bond. It is clear that this is a mere mode of discharging the original obligation; and can, with no propriety whatever, be carried out by simply renewing that original obligation. The time only for payment is postponed, but the mode of payment, both in reason and justice, remains unchanged.

Indeed, the proposition may be stated more strongly. The fallacy in the argument of those who claim that the principal of the United States bonds may be honestly and justly paid in United States notes, is this: they regard the mere form of the transaction and not the substance and the effect which was intended. In 1862, the United States needed, for the purpose of suppressing a great rebellion, the services and labor of men, supplies of every description, arms and munitions of war, and had not the money in the Treasury to procure them. A resort to credit was necessary. The credit desired was for twenty

years, but, in the event of a speedy and successful termination of the war, payment might be made after five years. The means and instrumentalities which were used, among others, to obtain what was needed, and upon the credit proposed, were United States notes and United States bonds. They answered the purpose, and now the holders of the bonds are really, equitably and justly, the representatives and assignees of those who rendered services and furnished supplies, and are entitled to real and substantial payment therefor. Any one who will reason on the subject can readily work out this proposition. If a history could be written of a United States note issued during the war, that history would fully demonstrate the proposition.

An end had to be accomplished, labor and material had to be obtained, and payment made therefor. As mere means to that end, bits of paper were employed, which, though finely printed or engraved, had no real or intrinsic value, except as evidence that at some future time the Government intended to make the agreed payment for the labor and material. As to that payment, the end has not yet been reached. It can never be reached by the mere shifting of the bits of paper. Congress never intended to reach that end in that mode. It can not be be classed among those,

> "That palter with us in a double sense;
> That keep the word of promise to our ear,
> And break it to our hope."

It is evident that two modes of obtaining credit presented themselves to the Government. One was the simple sale in the market for gold and silver coin, or its equivalent, of the bonds of the United States. This could only be accomplished at a heavy discount, and even then would have required time for the negotiation. The emergency, as has been shown, was pressing, and the other mode presented was adopted, the issue of notes payable on demand, given currency and value by making them a legal-tender, and redeemable in United States

bonds bearing interest; so that the hardship which might result from the capacity conferred upon them as a legal-tender, would be alleviated by the privilege of exchanging them for bonds of the United States. Now it is evident from the whole history of the legislation, and from the debates in Congress which have been referred to, that this issue of notes was intended to be a mere temporary measure. It was intended that the issue and reissue of the notes should be accompanied by the negotiation of bonds. In the sale or negotiation of bonds by the Secretary of the Treasury, he had no authority to discriminate against the notes in favor of gold and silver coin. Substantially, then, and even after the repeal of the direct provision for exchange, before noticed, the notes, so long as the issue of the bonds continued, were exchangeable at the pleasure of their holders for the bonds.

If the great object of issuing the notes was to facilitate the negotiation of the bonds, thus accomplishing indirectly and more speedily what was felt to be inevitable—a disposition of the bonds, as compared with their par value in gold and silver coin, at a discount, it is not credible, that the use of the notes was intended to be continued after the occasion for the negotiation of bonds had ceased. And so it is not credible, that a mere option of payment, secured by the terms of the bond, was regarded as a claim or demand against the United States, within the meaning of the law.

The object and purpose of the law was clearly to meet a temporary and pressing emergency. The emergency was known to be pressing, and it was supposed that it would be temporary. The claims and debts for which it was intended to provide, however general the language, were those the payment of which might or would be required presently and immediately, or during the continuance of the cause which led to the adoption of the measure. It is inconceivable that a mere right of redemption, a mere option to pay, could have been

regarded as a claim or demand against the United States, to be discharged by a note of the United States, payable on demand. It was a duty incumbent on the United States to pay the notes so soon as the necessity for their issue had passed, and in the language of the act itself the exigencies of the public interests did not otherwise require. No exigencies of the public could require the use of such notes in paying, when there was no right, legal or equitable, to demand payment.

There is a section of the act of the 25th of February, 1862, which has a strong bearing upon the question of the intention of Congress. It is the fifth:

"SEC. 5. And be it further enacted, That all duties on imported goods shall be paid in coin, or in notes payable on demand, heretofore authorized to be issued, and by law receivable in payment of public dues, and the coin so paid shall be set apart as a special fund, and shall be applied as follows: First, To the payment in coin of the interest on the bonds and notes of the United States. Second—To the purchase or payment of one per centum of the entire debt of the United States to be made within each fiscal year after the first day of July, 1862, which is to be set apart as a sinking fund, and the interest of which shall, in like manner, be applied to the purchase or payment of the public debt, as the Secretary of the Treasury shall, from time to time, direct. Third—The residue thereof to be paid into the treasury of the United States."

We have in this section another instance of the use of general language, to be restricted and limited by the proper object. The expression is the "entire debt of the United States," which may include every part and portion of the debt of the United States, but was evidently only intended to include the funded debt, that bearing interest, and the evidences of which are purchasable in the market. Now, the provision in this section for the purchase or payment of that debt in coin, is inconsistent with the idea that it was embraced under the general language used in the first section. Indeed, it may be safely asserted that no one supposed that the permanent funded debt of the United States, as to which, after a lapse of years, there would be a mere option of payment, was included in that language.

There is another provision in the acts, already adverted to, which requires further notice. Under the acts of 25th February, 1862, and 11th July, 1862, a very important attribute or quality was attached to the United States notes—the absolute right to require in exchange therefor a five-twenty bond, which was taken away by the act of the 3d of March, 1863, unless the notes should be presented for exchange on or before the 1st day of July, 1863. If it could be shown that the principal of the five-twenty bonds is payable in United States notes, it would be clearly unjust to pay them in notes not possessing every essential attribute and quality of the notes which were given in exchange for the bonds. A party holding a claim was required, under the act of the 25th of February, 1862, to receive in payment thereof United States notes, but at the same time an assurance was given to him by the clear language of the law, that he had a right to receive therefor a five-twenty bond, and it was as clearly expressed that the interest on that bond should be paid in coin. If it shall be held that in payment of the principal he was to receive United States notes, then very clearly it was such notes as were authorized by that act—notes having the same qualities and attributes, and capable of being used for the same purposes. To give him any other notes would be a breach of faith. When Congress, therefore, took from the United States notes the essential quality and attribute which has been mentioned—one so important that it will be found engraved on the notes themselves—it could only have been upon the understanding that the principal of the bonds was payable, not in those notes, but in coin.

It is also to be noticed that the express provision that a five-twenty bond should be given for the United States notes, was only one of the modes for the redemption or funding of those notes. They were also to be redeemed and funded in the same manner provided for the treasury notes and floating debt of the United States, by the second section of the act of 25th

February, 1862. And, indeed, under that and subsequent acts, this mode of redemption and funding existed so long as the issue of the United States bonds continued.

Indeed, it is apparent from the whole course of the legislation, in relation of the legal-tender notes, that their issue originated in a necessity to obtain credit, to sell or negotiate the bonds of the United States, and thereby raise means to carry on the war. The convertibility of the notes into the bonds was a prominent feature in the whole arrangement. It was both an object and justification. Substantially, the making the notes a legal-tender was a forced loan, excused from necessity, and justified by exchanging the credit of the Government for that of the debtor, enabled to pay his debt in a depreciated currency. That this convertibility was prominent in the mind of the legislator, is obvious from comparing the first section of the act of the 11th July, 1862, authorizing the second issue of one hundred and fifty millions, with the corresponding section of the act of the 25th February, 1862. The last clause of the latter is as follows:

"And such United States notes shall be received the same as coin at their par value, in payment for any loans that may be hereafter sold or negotiated by the Secretary of the Treasury."

In the former this clause is put in the very beginning of the provision, describing the capacities and qualities of the notes:

"And such notes shall be receivable in payment of all loans made to the United States, and of all taxes, internal duties, excises, debts, and demands of every kind due to the United States, except duties on imports and interest, and of all claims and demands against the United States, except for interest upon bonds, notes, and certificates of debt or deposit; and shall also be lawful money and a legal tender in payment of all debts, public and private, within the United States, except duties on imports and interest, as aforesaid."

When the necessity for the sale and negotiation of bonds of the United States has ceased, and the privilege of converting the notes into the bonds has been taken away, the justification for the reissue of the notes by the United States, with their

capacity to discharge debts and obligations, created before their original issue in 1862, would seem no longer to exist. And the idea I have suggested, that the legal-tender measure was substantially a forced loan, illustrates the principle of the rule of construction, before stated, and its manifest application to the acts of Congress relative to that measure. The letter of those acts—their general language—is not to be extended beyond their purview, their scope, and object. If their object was to obtain a loan of money, when that object was accomplished, the provisions of the acts properly ceased to operate, or have further effect. If their object was to obtain a loan of money, they did not extend to cases where the loan had been or might be obtained. For example: one individual owed money to another—the government said, receive payment in my notes, take my credit instead of the credit of the individual—come to my officer with the notes, and a bond showing the period of credit will be given. This being done, the whole object of the laws was accomplished. So, where before the laws were enacted the government had obtained a loan of money, and had given obligations for its payment, to such a case, the laws intended to obtain a loan of money could have no proper application. By proper construction, therefore, as well as in honor and justice, the obligations given for loans made before the issue of legal-tender notes, are payable in coin.

My attention has, so far, been directed to the act of the 25th of February, 1862, and I have endeavored to state the reasons which have led my mind to the conviction that the general language in the first section of that act, prescribing the capacities of the United States notes, was not intended to apply to the five-twenty bonds, the issue of which was authorized by that act. As there may, however, be a difference as to the issues under other acts, an inquiry into the provisions of those acts is necessary to complete the subject of discussion.

On the 3d of March, 1863, an act authorizing a loan of three hundred millions of dollars for the then fiscal year, and six hundred millions for the next, was passed. This act contained a provision, that the principal as well as the interest of the bonds to be issued should be payable in coin. The only issue under this act was of seventy-five millions of six per cent. bonds, redeemable after the 30th of June, 1881, and which are reckoned among the 1881 bonds.

On the 3d of March, 1864, an act supplementary to the former act was passed, authorizing a loan of two hundred millions, in lieu of so much authorized by the former act, and the principal and interest of the bonds to be payable in like manner. The former act required the bonds to be payable in not less than ten nor more than forty years. This act provided that they should be redeemable after any period not less than five years, and payable at any period not more than forty years. Under this act there were two issues of bonds, one of the ten-forties amounting to $196,117,300, and another of five-twenties amounting to $3,882,500. What was the object of introducing into these acts the provision that the principal and interest of the bonds should be payable in coin, I am not able to say. As the legal-tender notes were then largely in circulation, it may have been intended to exclude any possible conclusion that the bonds were to be paid in such notes. The provision does not seem to have been noticed at the time, or to have conferred any additional value on the five-twenties issued under it, which were sold at the same rate as the others had been—that is, at par.

On the 30th of June, 1864, an act was passed, authorizing a loan of four hundred millions of dollars. This act omits the provision in the two former, as to the payment of the principal of the bonds to be issued in coin, but does provide as to the interest. It may be argued that this omission was intentional, and indicated that the principal was to be paid in United

States notes. But there are two provisions, one in the first, and another in the second section, which strongly militate against such an intention. By the first section the Secretary of the Treasury was authorized to dispose of the bonds, if he should deem it expedient, "in Europe, at any time, on such terms as he may deem most advisable, for lawful money of the United States, or at his discretion, for treasury notes, certificates of indebtedness, or certificates of deposit, issued under any act of Congress." Now, it is not credible that Congress intended that the Secretary should send bonds to be sold in Europe, "redeemable at the pleasure of the government, after any period not less than five nor more than thirty years, or, if deemed expedient, made payable at any period not more than forty years from date," with an understanding that they were payable otherwise than in what would be money in Europe, gold and silver coin.

The first section provided that the bonds to be issued for the loan should be redeemable or payable, as has been just stated, but made no mention as to the kind of money in which they were to be redeemed or paid, although it did provide that the interest should be payable in coin. The second section authorized an issue, in lieu of and as a part of the loan, of two hundred millions of dollars, in treasury notes, payable at any time not exceeding three years from date, or redeemable at any time after three years from date, and bearing interest not exceeding seven and three-tenths per centum, "payable in lawful money, at maturity, or, at the discretion of the Secretary, semi-annually." Now, it will be observed that any argument, drawn from the use and omission of "coin," in the first section is answered, or its force balanced, by the use and omission of "lawful money," in the second section. If the express provision in the first section, that the interest is payable in "coin," leads to the inference that the principal is payable in "lawful money," then the express provision in the second sec-

tion, that the interest is payable in "lawful money," leads to the inference that the principal is payable in coin. An intention would thus be attributed to Congress of putting the principal of the notes upon a different and better footing than the principal of the bonds; which would be absurd and can not be supposed. On the contrary, it was supposed to be a *privilege* conferred on the holders of the notes, that they might be converted into the bonds.

Upon looking into the debates when this act was in its progress through the House of Representatives, this difference between the acts was the subject of remark. The bill had been prepared at the Treasury Department. The difference was called to the attention of the member of the Committee on Ways and Means, Mr. Hooper, having charge of the bill, by an amendment proposed by Mr. Brooks, of New York, to insert the words "payable in coin." The remarks of Mr. Hooper were as follows: "The bill of last year—the $900,000,000 bill—contained those words, but it was not deemed necessary or considered expedient to insert them in this bill. I will send up to the desk and ask to have read, as part of my reply to the gentleman, a letter from the Secretary of the Treasury, which was published some time ago, giving his views upon that point." This letter was then read:

"TREASURY DEPARTMENT, May 18, 1864.

"SIR:—Your letter of the 13th instant, making inquiries in regard to the kind of currency with which the five-twenty years six per cent. and the three years seven-thirty per cent. notes are to be redeemed, has been received. It has been the constant usage of the department to redeem all coupon and registered bonds, forming part of the funded or permanent debt of the United States in coin, and this usage has not been deviated from during my administration of its affairs. All the treasury notes, and other obligations forming part of the temporary loan, are payable, and will be redeemed, in lawful money, that is to say, in United States notes, or national currency, until after the resumption of specie payments, when

they also, will doubtless be redeemed in coin, or equivalent notes. The five-twenty sixes being payable twenty years from date, though redeemable after five years, are considered as belonging to the funded or permanent debt, and so, also, are the twenty-years sixes, into which the three-years seven-thirty notes are convertible. These bonds, therefore, according to the usage of the government, are payable in coin. The three-years seven-thirty treasury notes are part of the temporary loan, and will be paid in United States notes, or national currency, unless holders prefer conversion to payment.

"Very respectfully,

S. P. CHASE, *Sec'y of Treasury.*"

And thereupon Mr. Brooks withdrew his amendment.

Subsequently, Mr. Stevens offered an amendment to make the principal of the bonds payable in coin, and the interest in lawful money. His amendment was amended, on motion of Mr. Hooper, by making the interest as well as the principal payable in coin, and then the amendment, adopted in committee of the whole, was non-concurred in by the House, leaving the bill, in this respect, as it was prepared at the Treasury Department and reported to the House. Thus, substantially, affirming both the action and opinion of the Secretary of the Treasury, in leaving out of the bill, as unnecessary, a provision that the principal of the bonds was payable in coin, it being so payable without any such provision.

It is proper here to observe that, in the debate upon this bill, Mr. Stevens announced his opinion that the principal of the bonds of the United States is payable in United States legal-tender notes, and he said, when informed of the opinion of the Secretary of the Treasury, that it was different from the law. His argument, as reported, is this: "The law says expressly that the interest is payable in coin and that the principal is payable in money. The difference in the terms employed is as distinct and definite as if it had been, in so many words, that the one is payable in coin and the other in paper currency." He subsequently said: "In the bill we are acting on, the principal is payable in money, whatever it may be."

The last remark shows what he meant by expressly payable in money. He meant that, as there was no express provision as to the kind of money, the general language of the acts creating the legal-tender notes applied. And this is the question which I have already so fully discussed.

So far, therefore, as the action of the House of Representatives, shown in the debates, affects the construction either of the act of February 25, 1862, or that of June 30, 1864, it shows that the principal of the five-twenty bonds issued under those acts is payable in coin.

There is a doctrine of frequent application in judicial proceedings known as a parol or equitable estoppel. If the Secretary of the Treasury were the agent of an individual, the circumstances under which his power to act were given would constitute such an estoppel. The principal confers the power in terms which the agent at the time states, according to his interpretation, acted upon before, authorizes a particular course of conduct and particular representations. The agent in making a contract in the name of the principal pursues that course of conduct, and makes those representations. The principal is, in common fairness and honesty, precluded from denying the authority of the agent, and is bound by the construction he gave to the terms of his power. And this principle applies with increased force when it appears that the principal, knowing the course the agent was pursuing, actually appropriates and uses that which was the consideration of the contract made by the agent.

The amount of five-twenty bonds issued under the act of June 30, 1864, as shown by the last report of the Secretary of the Treasury, is $125,561,300. His report also shows that treasury notes were issued under that act; but, from the best information I can obtain, they were converted into five-twenty bonds under the next act to be noticed, and under which all the other five-twenty bonds were issued. Before

proceeding to that act, I will make a statement as to the bonds of the United States. The statement of the Secretary of the Treasury, published to the 1st September, 1868, makes the aggregate $2,096,491,750. He places them in three classes. Five per cent. bonds, $221,538,460; six per cent. bonds of 1881, $283,677,300; six per cent. five-twenty bonds, $1,591,276,050. It is to these latter that the claim that they are payable in United States notes applies. This claim can not apply to those issued under the act of March 3, 1864, amounting to $3,882,500, the same act under which the ten-forties were issued. The amount which has been issued under the act of the 25th of February, 1862, is $514,771,600. That act only authorized five hundred millions. The additional amount is authorized by acts of the 3d of March, 1863, and 28th of January, 1865. The amount which has been issued under the act of June 30, 1864, I have already stated to be $125,561,300. These amounts deducted from the aggregate, leave, in round numbers, nine hundred and forty-seven millions issued under the act of March 3, 1865. If, therefore, there be in that act any provisions affecting the question under discussion, they must have a very important effect and operation. I think there are such provisions, and read the first and second sections of that act:

"SEC. 1. Be it enacted, &c., That the Secretary of the Treasury be, and he is hereby authorized to borrow, from time to time, on the credit of the United States, in addition to the amounts heretofore authorized, any sums not exceeding in the aggregate six hundred millions of dollars, and to issue therefor bonds and treasury notes of the United States in such form as he may prescribe; and so much thereof as may be issued in bonds shall be of denominations not less than fifty dollars and be made payable at any period not more than forty years from date of issue, or be made redeemable, at the pleasure of the Government, at or after any period not less than five years nor more than forty years from date, or may be made redeemable and payable as aforesaid, as may be expressed upon their face; and so much thereof as may be issued in treasury notes may be made convertible into any bonds authorized by this act, and may be of such denominations—

not less than fifty dollars—and bear such dates, and be made redeemable or payable at such periods as in the opinion of the Secretary of the Treasury may be deemed expedient. And the interest on such bonds shall be made payable semi-annually; and on the treasury notes authorized by this act the interest may be made payable semi-annually or annually, or at maturity thereof; and the principal or interest, or both, may be made payable in coin or in other lawful money; *Provided*, that the rate of interest on any such bonds or treasury notes, when payable in coin, shall not exceed six per centum per annum; and when not payable in coin shall not exceed seven and three-tenths per centum per annum; and the rate and character of interest shall be expressed on all such bonds or treasury notes. And provided, further, that the act entitled 'An act to provide ways and means for the support of the Government and other purposes,' approved June 30, 1864, shall be so construed as to authorize the issue of bonds of any description authorized by this act. And any treasury notes or other obligations bearing interest, issued under any act of Congress, may, at the discretion of the Secretary of the Treasury, and with the consent of the holder, be converted to any description of bonds authorized by this act; and no bonds so authorized shall be considered a part of the amount of six hundred millions hereinbefore authorized.

"SEC. 2. And be it further enacted, that the Secretary of the Treasury may dispose of any of the bonds or other obligations issued under this act, either in the United States or elsewhere, in such manner and at such rates, and under such conditions as he may think advisable, for coin or other lawful money of the United States; or for any treasury notes, certificates of deposit, or other representatives of value, which have been or may be issued under any act of Congress, and may, at his discretion, issue bonds or treasury notes authorized by this act, in payment for requisitions for materials or supplies which shall have been made by the appropriate departments or offices upon the Treasury of the United States, on receiving notice, in writing, through the department or office making the requisition that the owner of the claim for which the requisition is issued, desires to subscribe for an amount of loan that will cover said requisition, or any part thereof; and all bonds or other obligations issued under this act shall be exempt from taxation by or under state or municipal authority."

This act, it will be seen, confers upon the Secretary of the Treasury full power and discretion as to the kind of money in which the notes and bonds to be issued under it are to be

made payable, either in respect of the principal or interest. The language is clear and distinct that, as to the bonds authorized by this act, the principal, or interest, or both, may be made payable in coin or other lawful money. As to the nine hundred and forty-seven millions of dollars for which bonds have been issued under this act, the only question as to the payment of the principal is a mere question of fact, which the officers of the Treasury Department ought to be able at once to decide, upon evidence in their knowledge or in their possession.

Indeed, the Secretary of the Treasury, in his last annual report, very clearly gives us that decision. He says:

"National debts are subject to the moral law of nations. Whenever there is no expression to the contrary, coin payments in such obligations are honorably implied. The policy of the Government of the United States in regard to the payment of its debts has been uniform and consistent. Prior to February 25, 1862, there was in the United States no lawful money but specie; consequently, its treasury notes and its bonds previously issued were payable in the same currency. Subsequently, all interest-bearing notes were made payable in lawful money, but no change was made in the form of the obligation of the bonds. Thus, the seven and three-tenths notes issued after that date, the five per cent. notes, and the compound-interest notes were made payable in lawful money; while the bonds, not being so payable, have ever been recognized by Congress, by the Treasury Department and by the people, as payable only in coin. These different classes of securities were negotiated with this distinct understanding, an understanding which is as binding upon the honor of the nation as if it were explicitly stated in the statutes."

As to the five-twenty bonds, issued under the acts of 1862 and 1864, I have admitted that the mere opinion of the officers of the Government is not conclusive as to the kind of money in which they are payable, and unless their representations were authorized by the laws under which they were acting, the Government is not bound. Whether upon a fair construction of the laws, and particularly of the general language in the acts creating the legal-tender notes, they were so author-

ized, has been the question discussed, but here we have an act recognizing the distinction between the different kinds of money, and giving clear authority to the officer to make the principal of the bonds payable in either. We have bonds issued under the act, of a kind and description which the Secretary expressly tells us are payable in coin. He had authority to make them so payable, and the form of the obligation is the usual and customary one employed in the exercise of such authority.

But suppose he was mistaken, and that he should have made the bonds bear on their face the stipulation that they were payable in coin. If it were the understanding that they were so payable, how does the failure to express it in terms affect the obligation of the Government? The authority was to make them payable in coin, or other lawful money. The act does say that the rate and character of interest should be expressed, but does not expressly require that a statement as to the kind of money in which they are payable, should appear upon the face of the bonds. The Government of the United States causes its bonds to be engraved and printed. Those who deal with it have the right to expect that the form truly and correctly expresses the effect and obligation represented by its officers. The only matter as to which they are strictly bound to inquire is as to the authority of the officer. Surely they should suffer no prejudice from a mere mistake in form.

The Democratic party in its platform demands payment of the public debt of the United States as rapidly as practicable; * * * "and where the obligations of the Government do not expressly state upon their face, or the law under which they were issued does not provide that they shall be paid in coin, they ought, in right and justice, to be paid in the lawful money of the United States." As said by the Secretary of the Treasury, in his remarks, which have been read, there are none of the bonds of the United States that express

upon their face that either the principal or interest is to be paid in coin. If they did state on their face what was inconsistent with the law under which they were issued, I suppose the law, and not the statement, would control the character of the obligation. I had, therefore, thought the first branch of the test proposed in the Democratic platform was put in unadvisedly, there being no case for its proper application. But it may have been, possibly, intended to apply to the bonds issued under the act of March 3, 1865, where, though the act provides that the bonds might, in the discretion of the Secretary of the Treasury, be made payable in coin, and such was the understanding, it is not so expressed upon the face of the bonds.

I can scarcely believe that any man, and much less that any party, can advance and advocate the proposition that the omission or neglect of the proper officer to insert in a contract he makes for the Government, a term he was authorized to insert, and which he agreed to insert, and supposed was really inserted, can be honestly and fairly taken advantage of by the Government, and be made an excuse for not complying with the contract, according to the real intention. It is well known that in the case of an individual, a court of justice would direct a correction of the evidence of the contract, and make it conform to the real intent of the parties. The United States can not be sued and compelled to make such a correction, but it is not speaking harshly of the proposition that the United States is not honorably and justly bound to correct such a mistake, that it is simply infamous.

I have now completed the statement of the reasons which have led my mind to the conclusion, that the principal of all the bonds constituting the funded or permanent debt of the United States, including what are commonly called the five-twenties, is payable in coin. I have confined myself to a consideration of the subject in what may be regarded its legal aspect, for it is understood that all are agreed that the payment shall be made in the mode which the law provides. In my view, therefore, it is not necessary that any considerations should be urged to show, what in this case is pre-eminently true—that honesty is the wisest and best policy. But I will say, that the judgment of no one on this subject should be influenced by a belief, that the bondholder has obtained his claim for much less than its

value in gold and silver coin. In very many cases this is not true. It is a matter into which the Government as a debtor has no right to inquire. If the claim of a creditor has been sold at a sacrifice when the credit of a debtor was bad, who ever heard that this was a just and honest reason why the party holding the claim should not be paid in full, when the debtor has the means to pay? We ought to feel that it is entirely fair and just, that those who took the risk should get the profit.

Some two months ago, being aware of a difference of opinion upon this subject, I concluded to examine it, and the result of my examination I made the subject of several communications to the Cincinnati Gazette. I mention this, that any one who may have seen those communications, may be assured that in using portions of them in this address, I have not appropriated what belongs to another.

I am aware that very distinguished men differ from the conclusion I have reached. Some of them are very clear in their opinions, and the Senator recently elected from Ohio to Congress, goes so far as to say, as reported in a recent speech, that no fair and candid man, who will investigate the question, can be of a different opinion. Now, I have shown that such lawyers as Chase and Fessenden did entertain, and we have proof in a recent speech of the latter, that he still entertains the opinion, that the principal of the United States five-twenty bonds is payable in coin. They are unable to find in the laws, in the preparation of which they either assisted or were consulted, any thing to the contrary.

When recently sitting on the trial of Andrew Johnson, those gentlemen were regarded by the Senator elect and his political associates as very fair and candid men. And when one of them voted for acquittal, he was "a Daniel come to judgment." But when their opinions have not the required political bearing and direction, they cease to be fair and candid.

Assertions of this kind are not of much force, either in law or politics. But I feel at liberty to say of those who think they have discovered in the acts of Congress what Chase and Fessenden, with their ability and opportunity, did not, that they accomplish the feat of seeing further into the millstone than those who pecked it; or, as said by an American satirist:

"Optics sharp it takes, I ween,